

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)

4) **CASE CLOSURES UNDER**
5) **ENFORCEMENT PRIORITY SYSTEM**
6)
7

8 **SENSITIVE**

9 **GENERAL COUNSEL'S REPORT**

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11 **I. INTRODUCTION**

12 The cases listed below have been evaluated under the Enforcement Priority System
13 ("EPS") and identified as either low priority, stale, subject to the media exemption, or
14 cases previously reviewed by the ADR Office. This report recommends that the Commission
15 no longer pursue the cases cited in section II for the reasons discussed below.

16 **II. CASES RECOMMENDED FOR CLOSURE**

17 **A. Cases Not Warranting Further Action Relative to Other Cases**
18 **Pending Before the Commission**
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20 EPS was created to identify pending cases that, due to the length of their pendency in
21 inactive status or the lower priority of the issues raised in the matters relative to others
22 presently pending before the Commission, do not warrant further expenditures of resources.
23 Central Enforcement Docket ("CED") evaluates each incoming matter using Commission-
24 approved criteria that result in a numerical rating for each case.
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23-04-406-1963

1 We have identified six cases that do not warrant further action relative to other
2 pending matters. This Office recommends that all six cases be closed.¹ Attachment 1 to this
3 report contains a factual summary of each case recommended for closure, the case EPS
4 rating, and the factors leading to the assignment of a low priority.

5 **B. Stale Cases**

6 Effective enforcement relies upon the timely pursuit of complaints and referrals to
7 ensure compliance with the law. Investigations concerning activity more remote in time
8 usually require a greater commitment of resources primarily because the evidence of such
9 activity becomes more difficult to develop as it ages. Focusing investigative efforts on more
10 recent and more significant activity also has a more positive effect on the electoral process
11 and the regulated community. EPS provides us with the means to identify those cases that,
12 though earning a higher numerical rating, remain unassigned for a significant period due to a
13 lack of staff resources for an effective investigation. The utility of commencing an
14 investigation declines as these types of cases age, until they reach a point when activation of
15 such cases would not be an efficient use of the Commission's resources.

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18 We have identified one case that has remained on the Central Enforcement Docket for
19 a sufficient period of time to render it stale. This Office recommends that it be closed.²

¹ The cases recommended for closure are: P-MUR 409 (*Boone National Bank*); MUR 5273 (*Rocky Flash for U.S. Congress*); MUR 5282 (*Meehan for Congress*); MUR 5302 (*Friends of Irvin*);
and MUR 5313 (*MI Democratic State Cntrl Cmte*). The ADR Office previously reviewed MURs 5273, 5282, 5302, and 5313 for potential inclusion in the ADR program, but decided to return them to this Office.

² The case recommended for closure is MUR 5252 (*Taxpayers for Better Government*).

1 Attachment 2 to this report contains a summary and the EPS rating for the stale case
2 recommended for closure.

3 **C. Cases Returned to Enforcement**

4 The ADR Office previously reviewed cases for potential inclusion in the
5 ADR program, but decided to return them to this Office prior to the initiation of the new
6 ADR procedures for recommended case closures.³ Attachment 3 to this report contains a
7 summary and the EPS rating

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15 **III. RECOMMENDATIONS**

16 OGC recommends that the Commission exercise its prosecutorial discretion and close
17 the cases listed below effective two weeks from the date the Commission votes on the
18 recommendations. Closing these cases as of this date will allow CED and the Legal Review
19 Team the necessary time to prepare closing letters and case files for the public record.

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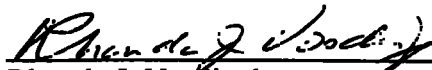
³ The two cases recommended for closure are MUR 5286 (*Porter for Congress*)

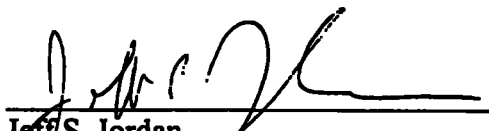
Take no action, close the file effective two weeks from the date of the Commission
vote, and approve the appropriate letters in:

1. P-MUR 409
2. MUR 5252
- 3.
4. MUR 5273
5. MUR 5282
6. MUR 5286
- 7.
8. MUR 5302
- 9.
10. MUR 5313

Lawrence H. Norton
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7/24/03
Date

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5 **MUR 5252**
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7 **Complainant:** The Honorable Rico Oller
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9 **Respondents:** Joanne Neft
10 Taxpayers' for Better Government
11 Rita Copeland, Treasurer
12 Committee to Elect Bill Kirby
13 E. Ken Tokutomi, Treasurer
14
15

16 **Allegations:** The Honorable Rico Oller, a California State Senator, alleged that the
17 "independent expenditure" mailer issued by Taxpayers' for Better Government
18 ("Taxpayers'") advocated the defeat of incumbent John Doolittle. The mailer, a
19 *Congressional Coloring Book – Featuring John Doolittle*, allegedly lacked a disclaimer,
20 and was designed, approved, published and financed in coordination with Dr. William
21 Kirby's campaign. The mailer is alleged to have been a coordinated effort between
22 Taxpayers' and the Kirby campaign because Joanne Neft, a spokesperson for Taxpayers',
23 is pictured with William Kirby in a newspaper and was present at a William Kirby
24 fundraiser. Finally, the value of the mailer allegedly constituted an in-kind contribution.
25 The complainant estimated that the cost of the mailer exceeded \$1,000.
26

27 **Responses:** Respondents, Committee to Elect Bill Kirby and E. Ken Tokutomi, as
28 treasurer, denied the allegations. The respondents indicated that the mailer was not, in
29 any manner, connected with their campaign. Additionally, "Joanne Neft, who Senator
30 Oller identifies as a 'spokesperson' for Taxpayers for Better Government, had no
31 position, role, or participation in the Committee to Elect Bill Kirby."
32

33 In response to the complaint, Taxpayers' and its treasurer, Rita Copeland, admit
34 that the first edition of the mailer, sent to approximately 23,000 voters, lacked the
35 required disclaimer, but did contain the committee's name, address, and identification
36 number. When Taxpayers' learned about the disclaimer requirements, the second edition,
37 sent to approximately 47,000 voters, included the disclaimer. Finally, the respondents
38 deny any coordination. Taxpayers' state that "Neft was not the spokesperson for
39 Taxpayers at the time these events took place."
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41 Joanne Neft did not respond.
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43 Taxpayers' for Better Government committee was terminated on May 3, 2002.
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45 **Date complaint filed:** March 21, 2002
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1 **Date responses received: Taxpayers' for Better Government and Rita Copeland,**
2 **treasurer, responded on May 3, 2002; and the Committee to Elect Bill Kirby and E. Ken**
3 **Tokutomi, treasurer, responded on June 10, 2002.**

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